

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DARREL C. OLDS, JR.,

12 Petitioner,

13 v.

14 WASHINGTON STATE DEPARTMENT OF
15 CORRECTIONS,

16 Respondent.

Case No. C08-5612 FDB/KLS

ORDER TO AMEND PETITION

This habeas corpus petition has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 1).

The Court notes that Petitioner has failed to name the correct Respondent, thereby depriving this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person having a day-to-day control over the prisoner. That person is the only one who can produce ‘the body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

ORDER - 1

1 Therefore, Petitioner's custodian for purposes of his habeas corpus petition challenging the
2 execution of his Washington state sentence, is the warden of the prison where he is currently
3 confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*,
4 875 F.2d 244, 249 (9th Cir. 1989).

5 In addition, Petitioner has filed a “Petition for Writ of Habeas Corpus Per RCW 7.36,” using
6 a form of the Superior Court of the State of Washington for Thurston County. Dkt. # 8. Pursuant to
7 Rule 2 of the Rules Governing Section 2254 Cases, a petition for habeas corpus must substantially
8 follow the form prescribed by this Court. The petition must specify all the grounds for relief
9 available to petitioner, state the facts supporting each ground, state the relief requested, be printed
10 typewritten or legibly handwritten and be signed under penalty of perjury.

11 || Accordingly, it is **ORDERED**:

12 (1) Petitioner shall amend his petition to name his immediate custodian and warden as
13 Respondent **on or before January 30, 2009**. Petitioner shall use the form prescribed by this Court.
14 To assist him, the Clerk of the Court is directed to mail Petitioner a 28 U.S.C. § 2254 Petition form:

15 (2) Petitioner's motion for extension of time to file service copies of petition (Dkt. # 3)
16 is **DENIED** as moot. Petitioner is reminded that at the time he files his amended petition, he should
17 submit one service copy of the petition; and

18 (3) The Court Clerk is directed to send a copy of this Order to Petitioner and to note this
19 matter for the Court's **January 30, 2009** calendar.

21 DATED this 16th day of December, 2008.


Karen L. Strombom
United States Magistrate Judge

28 || ORDER - 2